

National Park Service



National Park Service Concession Program

Commercial Use Authorizations

Concession Management Advisory Board Briefing Update – March 22, 2006

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OVERVIEW

- Review Legislative Requirements from PL 105-391
- Discuss Recent and current efforts
- Review Interim Guidelines
- Next Steps

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Authority for Commercial Use Authorization

- Concession Management Improvement Act of 1998, Section 418 provides the authority for the Secretary to issue Commercial Use Authorizations (CUA) to provide services to visitors
- New authority for CUA replaces the IBP program authorized under Special Directive 95-10

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Sec. 418 - Legislated Provisions

- ABILITY TO LIMIT
 - “The number issued must be consistent with proper management of resources and values and provide appropriate services and protection for visitors”
- Non-profit institutions are not required to obtain a CUA unless taxable income is derived from the activity
- Will not be considered concession contracts
- No construction may be authorized

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Sec. 418 Legislated Provisions cont'd.

- Term two years or less
- No preferential right of renewal or similar provisions (except as otherwise provided by ANILCA – specific to Alaska)
- Payment of a reasonable fee to recover associated costs
- Services must be accomplished in a manner that preserves and conserves park resources and values
- Liability of United States must be limited

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Recent Activity

- Fall 2005 - At the request of parks and regions, NPSCP developed guidance to implement legislated requirements
- December 2005 – Issued Interim Guidelines to Regions implement CUA authority very generally and with oversight to insure consistency in use of authority
- Staff is now refocused on Issuance of new Draft Proposed Rule

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Current Activity

- March 2006 – Responding to issues raised by the issuance of the Interim Guidelines
- Finalizing the new Draft Proposed Rule for workgroup and NPS review.
 - The drafted proposed rule will be reviewed by NPS Policy, DOI, OMB, among others.
- FUTURE - Work will begin to draft Director's Order and a reference manual.

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INTERIM GUIDELINES OVERVIEW

BROADLY AND GENERALLY IMPLEMENTS THE
LEGISLATED PROVISIONS of Section 418, 105-391

- Allows NPS officials to issue CUAs under criteria established in law:
 - Issued to “Qualified person” for “the provision of suitable commercial services to visitors”
 - Commercial services will have minimal impact on resources and values
 - Consistent with park area purposes, plans, regulations, and policies

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INTERIM GUIDELINES OVERVIEW

- Implements authority to issue ADDITIONAL TYPE - In-Park CUA where gross receipts are less than \$25,000
- Requires Superintendents to:
 - Not issue more permits than are consistent with the preservation and proper management of park resources and values

WHEN LIMITED:

- Must consult with regional staff prior to establishing a limited number of permits or establish visitor use limits under a permit
- Must issue through a competitive process to the most qualified in accordance with criteria established

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NEW DRAFT PROPOSED RULE

Changes and clarifications from previous published rule:

- Limitations for number of authorizations issued:
 - Limiting the number of authorizations will be addressed through existing regulation and policy (i.e. DO-2 and DO-12 Planning and Compliance)
 - In the absence of a plan, civic engagement and public comment will be sought prior to limitations being imposed.

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Changes and clarifications from previous published rule

- Commercial tour operators:
 - Will be administered through the CUA program.
 - The original draft rule excluded them from the program.
 - Working with the Fee Program Manager on these issues
- Random Selection:
 - Replaced with a process based on experience, performance criteria, and qualifications

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Changes and clarifications from previous published rule

- Definitions replaced:
 - The authorization will be called, Commercial Use Authorization
 - Within the above authority, incidental commercial use and in-park commercial uses may be authorized.
 - Qualified person was expanded on to include “a person that the Director determines has the experience and training to satisfactorily carry out the terms of the authorization.
 - “Commercial Bus Tour Permits” was replaced with “Commercial Tour”

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Other concerns addressed in new draft

- Encourages simplified fee structure and efficiencies
- AUTHORIZATION FOR NON-PROFIT where taxable income is not derived from activity
 - Legislation prohibits use of Commercial Use Authorization for these organizations
 - Rule and 36 CFR 5.3 requires other written authorization is required to provide the operators with the terms, conditions, and requirements –

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NEXT STEPS

- Finalizing the new Draft Proposed Rule for workgroup and NPS review.
 - The drafted proposed rule will be reviewed by NPS Policy, DOI, OMB, among others.
- Publish New Draft Proposed Rule for public comment
- May reconvene working group to address these comments
- FUTURE - Work will begin to draft Director's Order 48B and a reference manual for further implementation
- Develop Training for parks